

1712433 (Migration) [2019] AATA 4899 (18 July 2019)

DECISION RECORD

DIVISION: Migration & Refugee Division

CASE NUMBER: 1712433

MEMBER: Hugh Sanderson

DATE: 18 July 2019

PLACE OF DECISION: Sydney

DECISION: The Tribunal affirms the decision not to grant the applicant a Partner (Temporary) (Class UK) visa.

Statement made on 18 July 2019 at 2:28pm

1. CATCHWORDS

MIGRATION – Partner (Temporary) (Class UK) visa – Subclass 820 (Spouse) – relationship ceased – relationship not continuing and genuine – no evidence of pooled financial resources, shared household expenses or joint assets – lack of evidence regarding family violence – marriage of parties suggested by father – evidence of companionship and emotional support not provided – decision under review affirmed

LEGISLATION

Migration Act 1958 (Cth), ss 65, 5F, 359AA

Migration Regulations 1994 (Cth), rr 1.15A(3), 1.21, 1.23, 1.24, 1.25, Schedule 2, cls 820.211, 820.221

CASES

He v MIBP [2017] FCAFC 206

Any references appearing in square brackets indicate that information has been omitted from this decision pursuant to section 378 of the Migration Act 1958 and replaced with generic information

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

2. This is an application for review of a decision made by a delegate of the Minister for Immigration on 24 May 2017 to refuse to grant the applicant a Partner (Temporary) (Class UK) visa under s.65 of the *Migration Act 1958* (the Act).
3. The applicant applied for the visa on 10 December 2015 on the basis of her relationship with her [sponsor]. At that time, Class UK contained Subclass 820. The criteria for the grant of this visa are set out in Part 820 of Schedule 2 to the Migration Regulations 1994 (the Regulations).
4. Relevantly to this matter the primary criteria include cl.820.211 and 820.221 which require that at the time of application and decision, the applicant to be the spouse or de facto partner of the sponsor, unless the relationship has ceased and certain circumstances exist. These include that the applicant, or a member of the family unit, has suffered family violence committed by the sponsor: cl.820.211(8) or (9) and 820.221(3)(a) and (3)(b)(i). The applicant claims this occurred in this case.
5. The delegate refused to grant the visa on the basis that the applicant did not meet cl.820.211 because the delegate was not satisfied that at the time of the application the parties were in a genuine and continuing relationship. Accordingly, the delegate was not satisfied the applicant was the spouse, as defined in s.5F of the Act, of the sponsoring partner. The delegate therefore did not consider the claims that the applicant had suffered family violence.

Background

6. The applicant is a citizen of India and is currently [a certain age]. The sponsor of the applicant was born in Australia and is an Australian citizen. He is currently [a certain age].
7. The parties claim they first met each other [in] July 2014 at the applicant's aunt's home after the applicant had arrived in Australia two days before on a [temporary] visa. They claim that they developed an instant liking to each other and the applicant then moved in to live with the sponsor and his family.
8. The applicant departed Australia [in] July 2014. She then returned to Australia on a [temporary] visa [in] February 2015, remaining until [June] 2016. The parties claimed they decided to commit to a relationship with each other [in] September 2015. The applicant returned to Australia [later in] September 2015 on a [temporary] visa and the parties were married [in] November 2015. The current application was filed [in] December 2015.
9. [In] January 2016 the applicant applied for a variation of her bridging visa granted to her at the time she applied for the Partner visa to enable her to travel to India. She claimed her father was sick. She departed Australia [later in] January 2016, returning [in] February 2016.
10. [In] February 2016 the sponsor contacted the Department to advise them that his relationship with the applicant had broken down. The sponsor wrote to the Department where he made the following claims:
 - The sole purpose of the applicant marrying him was to obtain Australian citizenship;

- The marriage was never consummated and the applicant told him that she was not interested in him;
 - The applicant has a long term boyfriend in India who she eventually plans to sponsor to come to Australia;
 - The applicant had demanded the sponsor and his family give her money to pay for the Partner visa application, however, the amount she demanded was more than the costs of the application and she refused to repay the money; and
 - When the applicant was planning to return to India in early 2016 the sponsor had asked to go with her, but she refused to let him go with her.
11. The Department contacted the applicant to advise her that the sponsorship had been withdrawn and information indicated the relationship had ended. The Department requested the applicant provide information which would show the parties had ever been in a genuine relationship or to support any claims that she had suffered family violence.
12. The applicant claimed that her relationship with the sponsor ended [in] January 2016. The applicant made claims that she had suffered family violence committed by the sponsor's brother. She provided the following documents in support of the application:
- Statutory declaration of the applicant;
 - Letter from [Organisation 1] stating they had provided her some support;
 - Letters from Dr [A] dated 4 April 2016 and 13 April 2016 stating that she presented with depression and anxiety but not providing any reason for that diagnosis; and
 - Letter from [Mr B], psychologist, dated 23 December 2016 stating that he had seen her [numerous] times since February 2016 suffering from anxiety and depression as a result of her brother-in-law making continual sexual advances towards her and that she was subjected to domestic violence from her in-laws.
13. The delegate who considered the application noted the following issues:
- Although the applicant had claimed she had suffered family violence, the applicant was required first to show that she met the time of application criteria that she was the spouse of the sponsoring partner as defined in s.5F of the Act;
 - No information had been provided which would indicate the parties were pooling their financial resources or sharing household expenses or any other financial aspects which would indicate a genuine relationship;
 - Statements had been provided claiming that the parties were living together in the same household, however, there was little other information which would support the claim that they were living together in a genuine relationship;
 - Photos were provided of the parties together on limited occasions and this did not indicate any continuing social recognition of the relationship; and
 - There was no information which would indicate the parties considered their relationship as long-term or they drew any emotional support or companionship from each other.

14. Taking these matters into account, the delegate was not satisfied the parties had ever been in a genuine and continuing relationship or had a mutual commitment to a shared life as husband and wife to the exclusion of all others. The delegate was not satisfied the applicant was the spouse of the sponsoring partner as defined in s.5F of the Act and therefore did not meet the time of application criteria in cl.820.211(2)(a). Accordingly, the delegate refused the application.

Information to the Tribunal

15. The applicant provided a statement and other documents claiming that she was in a same-sex relationship with [Ms C]. She claimed that they first met [in] October 2017 on an internet dating site and had been living together in a de facto relationship since June 2018. They were planning to get married.
16. The applicant provided various documents in support of the claim that she had suffered family violence.
17. A report of [Mr B], psychologist dated 18 April 2015 noted the following:
- The applicant's marriage failed due to her reporting the continued sexual harassment she was subjected to by her husband's brother which has led her to suffering from anxiety and depression; and
 - She is ashamed to return to her homeland due to cultural embarrassment/ostracisation she would be subject to.
18. A report from her general practitioner, Dr [A], dated 13 April 2016 noted that she suffered from iron deficiency and anaemia, asthma and had symptoms of depression and anxiety/stress due to recent life events. There was no report that she had suffered family violence committed by the sponsoring partner or any other person.
19. A letter from [team] leader of the migration supports program for [Organisation 1] stated that she had received support from [Organisation 1] from [April] 2016 to [May] 2017 until she secured independent housing and employment.
20. A report from [Ms D], psychologist, dated 16 February 2019 noted the following:
- The applicant was abandoned by her parents at a young age and she was adopted by people who abused her and she 'lost her childhood';
 - When the applicant came to Australia in July 2014 she stayed with distant relatives [who] abused her and then she met another man who also threatened and abused her;
 - When the applicant returned to Australia in February 2015 she stayed with her aunt who abused her and after three days kicked her out of the home at 3:00 am;
 - The applicant went to [a] train station and while sitting there she met the sponsor who was the neighbour of her aunt and he then arranged with his father for the applicant to be invited to stay at their home;
 - The applicant found the sponsor trying to open her suitcase to steal her passport, and he apologised for this, saying that he had been told to do this by her aunt;

- The sponsor's father proposed that she marry the sponsor and this made the sponsor's brother [Mr E], jealous;
 - Because the applicant married the sponsor, [Mr E] was jealous and abused the sponsor by punching her on the face, holding her wrist, following her in and outside the house, touching her body, trying to kiss her and threatening to destroy her relationship with the sponsor and his parents;
 - The applicant returned to India because her father was in intensive care with a [medical] condition and, when in India, the sponsor's father emailed her saying that "Everything is finished, don't come back" and he sent other threatening emails;
 - The sponsor's brother, [Mr E], wrote saying that he will have her on his radar;
 - When the applicant returned to Australia, due to the family violence and sexual harassment from [Mr E], she did not return to the house; and
 - The applicant suffers from extremely severe depression, anxiety and stress.
21. The applicant provided a statutory declaration where she said that she was "a victim of Domestic violence by a family member of my husband". She claimed there was not a relationship breakdown, but it was a decision of her parents-in-law as they were unhappy due to the incident of the attempted rape of her by [Mr E]. She set out allegations against [Mr E] of trying to harass and rape her. She said that while in India, she received aggressive and rude emails from [Mr E] and her father-in-law. She claimed the sponsor wrote to her saying that he was sorry but he had to leave her because his parents were not interested in continuing helping him if he continued his relationship with her.
 22. The applicant's agent wrote to the Tribunal on 9 July 2019 requesting a postponement of the hearing on the basis that the applicant was planning to marry Ms [C] [in] August 2019. The Tribunal declined to postpone the hearing as the fact that the applicant was claiming to be in another relationship was irrelevant to the issues before the Tribunal.
 23. The applicant wrote to the Tribunal on 10 July 2019 again requesting a postponement of the hearing. She claimed that her lawyers had not properly explained the situation. She claimed that she was lacking a few documents. She claimed that she was "not aware of the legal laws and legislation to be able to represent my case myself and I have also tried to approach the legal aid lawyer who straightaway told me to give up on that case and that stops me from approaching legal aid again as I have had no proper support from them either." The Tribunal declined to postpone the hearing as the applicant had been represented by a migration agent since January 2019.
 24. The applicant appeared before the Tribunal on 16 July 2019 to give evidence and present arguments. The applicant was represented in relation to the review by her registered migration agent who attended the hearing.
 25. The Tribunal commenced the hearing by explaining to the applicant the process under s.359AA of the Act. It explained that it would be putting to her information which would be the reason, or a part of the reason, for affirming the decision under review. It would explain what the information was, why it was relevant and then invite the applicant to comment on or respond to the information. If she required more time, she could request an adjournment.
 26. The applicant provided details of how her relationship with the sponsor began. She said that she began living in the home of the sponsor and his family in about March 2015. She said that she shared a room with the sponsor's mother. She said she only started sharing a

bedroom with the sponsor about a month before they were married, after they became engaged.

27. The applicant said that it was the sponsor's father's idea for them to get married. She said that both she and the sponsor were quite hesitant about the idea. This was because they were still quite young, they were not financially stable and they felt they were being pushed into the relationship by the sponsor's father. They eventually agreed to the suggestion to get married.
28. The applicant said that the sponsor had a bank account in his sole name, details of which were provided to the Department. She said this account was provided as it was the only account they had which provided details for three months. She said that she had her own bank account which was opened in July 2015, however, there was not much money in this and the only deposits came from the sponsor's father. They never had a joint account.
29. The Tribunal asked the applicant who Mr and Mrs [F] were. She said they were friends of the sponsor's family and she only met them at the sponsor's house. She believed they lived in the [suburbs] of [City 1]. She said they were the only people who are close to the family which was why they were the witnesses for the marriage. She said other people the sponsor's family knew were unwilling to be witnesses of the marriage because they did not want to get involved in any legal matters with the family.
30. The Tribunal noted no information had been provided from any family members of the applicant or friends of the applicant. She said that she does not get along with her relatives in [City 2] or her aunt in [City 1]. She said that there was no one on her side who could provide a statement to support the application.
31. The applicant said that she began planning to return to India about two weeks before the wedding. She said that she hoped that the sponsor would travel with her but he chose to not to do so as he had just started a job. She said she asked him to come back with him to India but he did not agree to do so. She said that the sponsor's father argued with her and said that she should cut her ties with her family in India. She said that the sponsor had no problems with her travelling back to India, only his father had a problem with it. She said that the sponsor was scared of his father and would not challenge him.
32. The applicant said that when she told the sponsor of what his brother, [Mr E], had done to her he was respectful of her, but told his father what she had told him and then followed what his father said he should do. She said that if he had the guts he should have stood up for her.
33. The Tribunal referred to the letter written by the sponsor dated 22 February 2016 to the Department alleging the applicant was never in a genuine relationship with him, that she was planning to sponsor her long-term Indian boyfriend and that he and his family had been used and duped by her. This was relevant as it indicated the sponsor did not believe the applicant was ever in a genuine and continuing relationship with him or that she had a commitment to a shared life as husband and wife to the exclusion of all others with the sponsor.
34. The applicant said that if, after being married for one week, the sponsor thought she had a boyfriend then he should have told her about it. She claimed that the sponsor had misused his sponsorship of her and believed the letter had not been written by the sponsor but by somebody else. It was noted the hand writing of the letter was significantly different to the handwriting of the sponsor when he signed his name.
35. The Tribunal referred to the letter the sponsor had sent to the Department on 4 August 2015, annexing emails from his father and [Mr E] to the applicant and her responses. This was

relevant as it indicated the parties were never in a genuine relationship and that the sponsor had taken money from the applicant's family, indicating that she did not have a long-term commitment to a relationship together.

36. The sponsor said that the sponsor's father gave the sponsor money that he had planned to give to both his sons when they got married. She said the sponsor then transferred the money from his account into her account as she had to pay for the visa application and other expenses. She said that she had spent all the money which was why there was nothing left to return to the sponsor. She said that as it was a gift from the sponsor's father, there was no reason why she should have returned the money.
37. The Tribunal noted the issues with respect to whether the parties were in a genuine and continuing relationship or had a mutual commitment to a shared life as husband and wife to the exclusion of all others at the time of the application.
38. The Tribunal noted that the evidence provided by the applicant that she had suffered family violence committed by the sponsoring partner did not appear to meet the evidentiary requirements as the reports from the psychologists did not identify the sponsoring partner as the person who had committed family violence. The Tribunal also noted that the evidence of the applicant at the hearing was that the sponsor was the most easy-going person she had known and that he was respectful of her. The evidence was that the sponsor had a problem with his father and was scared of him. The applicant said that if the sponsor had stood up to his father and brother then she would not have suffered family violence.
39. For the following reasons, the Tribunal has concluded that the decision under review should be affirmed.

CONSIDERATION OF CLAIMS AND EVIDENCE

40. In the present case, the applicant claims the relationship with [the] visa sponsor has ceased, and she has been the victim of family violence. The Tribunal has first considered whether the applicant was, at the time of the application, the spouse of the sponsoring partner.

Whether the parties are in a spouse or de facto relationship

41. Clause 820.211(2)(a) requires that at the time the visa application was made the applicant is the spouse or de facto partner of an Australian citizen or Australian permanent resident or an eligible New Zealand citizen. In the present case the applicant claimed to be the spouse of the sponsor who is an Australian citizen.
42. 'Spouse' is defined in s.5F of the Act and provides that a person is the spouse of another where the two persons are in a married relationship. Persons in a married relationship must be married to each other under a marriage that is valid for the purposes of the Act, there must be a mutual commitment to a shared life as a married couple to the exclusion of all others, the relationship must be genuine and continuing, and the couple must live together, or not live separately and apart on a permanent basis: s.5F(2)(a)–(d). In forming an opinion about these matters, regard must be had to all of the circumstances of the relationship. This includes evidence of the financial and social aspects and the nature of the parties' household and their commitment to each other as set out in r.1.15A(3), which is extracted in the attachment to this decision. Each of the specific matters contained in r.1.15A(3) are effectively questions which must be answered: *He v MIBP* [2017] FCAFC 206.

Are the parties validly married?

43. If the parties are validly married, they may meet the requirements of a married relationship, but not a de facto relationship. The parties were married on 11 November 2015 in Hornsby. There is nothing to indicate that the marriage between the parties is not valid. On the evidence, the parties were married to each other under a marriage that is valid for the purposes of the Act as required by s.5F(2)(a).

Are the other requirements for a spouse relationship met?

Financial aspects

44. The applicant provided little information as to the financial aspects of the relationship at the time of the application. A copy of the sponsor's bank account was provided, however, this does not provide any indication that the parties were pooling their financial resources or sharing any day-to-day household expenses. There is no information in this account which would indicate the sponsor was providing any financial support to the applicant.
45. The applicant had a bank account in her own name. She did not provide a copy of the details of this account to the Department or to the Tribunal. She claimed there was not much money in this account and that the only money that was deposited into the account came from the sponsor's father. This cannot be confirmed by the Tribunal.
46. The sponsor's bank account shows that [in] December 2015 there was a cash deposit of [a certain amount] with a further cash deposit of [a lower amount] the same day. The applicant claimed this was money the sponsor's father had given to them as a wedding gift. She claimed the sponsor then transferred the money to her bank account so that she could use it to pay for the visa application and associated costs. It is difficult to understand why, if the parties were pooling their financial resources, any costs associated with the visa application would not have simply been paid by the sponsor, or directly by his father from his account, rather than having to transfer it directly to the applicant's account.
47. An issue immediately arose in relation to that money after the sponsor travelled to India and the applicant's father demanded the return of [an amount] which it was claimed was in excess of the costs associated with the visa application and therefore needed to be returned. The applicant claimed that there was no requirement to return this money as it was a gift and the balance of the money not used for the visa application disappeared in other expenses she had. She said she spent the money. The fact that the sponsor's father was requesting the return of this money indicates the parties were not pooling their financial resources.
48. Overall, there is little information which would indicate the financial aspects of the relationship support a finding that the parties were ever in a genuine and continuing relationship or had a mutual commitment to a shared life as husband and wife to the exclusion of all others. Although claiming to have been supported by the sponsor's family, the applicant has provided nothing to support this claim and there is no evidence that the parties had any joint assets or liabilities.

Household

49. The applicant claimed that she started living in the home the sponsor shared with his parents and brother from about March 2015 until she departed Australia [in] June 2015. Over that period she was sharing a bedroom with the sponsor's mother. When she returned to Australia in September 2015 she claims that she only started sharing a bedroom with the sponsor about a month before their marriage.

50. There was little information provided about the arrangements in the household. As it was the household of the sponsor's parents, the sponsor first had to obtain approval from his father before the applicant was invited by him to stay at their home. In the statement provided by the applicant at the time of the application there is no information provided as to the arrangements within that household, such as the living arrangements and the sharing of the house work.
51. The Tribunal accepts that the applicant was living in the home the sponsor shared with his parents and brother at the time the application was filed. Apart from this, there is little to show that the parties had established a household together which would be indicative of the parties living in a genuine and continuing relationship. The applicant claimed the parties were looking for alternative accommodation so that they could live together without his parents, however, there is no independent information to support this claim. Although the Tribunal places some weight on the fact that the applicant was living with the sponsor in his parent's home, there is little further information as to the arrangements in the household which would indicate the parties' relationship was genuine and continuing or they had a mutual commitment to a shared life as husband and wife to the exclusion of all others.

Social aspects

52. There is little information as to the social aspects of the relationship. Statements have been provided by Mr and Mrs [F] who were longtime friends of the sponsor's family and claim to have known the applicant for about one year. At the time the parties were married. Mr and Mrs [F] were the witnesses for the marriage.
53. The applicant said that she only met Mr and Mrs [F] at the sponsor's home. She did not know any details in regard to their lives. She believed they lived in [Location 1] when in fact they live in [Location 2]. The fact that the sponsor had only limited contact with Mr and Mrs [F] would indicate the claims made by them that they believed the relationship would last a long time and they loved each other is based on limited or no information. The Tribunal places little weight on the statements as indicating the parties' relationship was ever genuine and continuing or that they had a mutual commitment to a shared life as husband and wife to the exclusion of all others.
54. The applicant did not provide any statements or information from any of her relatives or friends to indicate that she had advised them she had married the sponsor or the existence of their relationship. She claimed that she had a poor relationship with her aunt in [City 1], who she claims she was living with when she first met the sponsor and was a friend of the sponsor's family, and another relative in [City 2], who again she claimed she had a poor relationship with. No statement was provided from her father who she claimed she had a good relationship with and returned to India in January 2016 to be with due to a hospital admission.
55. The photos provided by the applicant in support of the application do not give any indication of any social recognition of the relationship. The photos appear to have been taken at the time of the applicant's marriage to the sponsor and on other occasions in the home of the sponsor. They do not indicate the parties participated in any other significant social activities or travelled together at any time.
56. The applicant returned to India [in] January 2016, about two months after the parties were married. The sponsor did not travel with her. The applicant said this arrangement to travel was planned by her about two weeks before the wedding. It was claimed she was required to travel as her father was in hospital, however, no documents have been provided which would substantiate this claim. The fact that the sponsor was planning before she had married the sponsor to return to India two months after the marriage and that she was to

travel alone does not support a finding that the parties were ever in a genuine relationship. This is regardless of whether that decision to travel alone was made by the applicant or the sponsor.

57. Overall, there is little information which would indicate the parties represented themselves as being married to each other or that their marriage was recognised by friends and acquaintances as genuine.

Commitment to each other

58. The applicant claimed she first met the sponsor [in] July 2014 at a party held in her aunt's place. She claimed that they committed to a relationship together [in] September 2015, after the applicant had returned to India. They were married [in] November 2015. The applicant returned to India [in] January 2016, just over two months after the parties had married, and they have never lived together since then. The sponsor advised the Department [in] February 2016 that his relationship with the applicant was over and he believed the sole purpose the applicant entered the marriage was so that she could get Australian citizenship.
59. There is little information which would indicate that over the less than three months of their marriage the parties provided any degree of companionship and emotional support which would indicate they had a mutual commitment to a shared life as husband and wife to the exclusion of all others or that the relationship was genuine and continuing. The evidence of the applicant was that it was the sponsor's father's idea that they get married. She said that both she and the sponsor were quite hesitant about this proposal as they considered themselves quite young and not financially stable. She said that she believed that both she and the sponsor felt that they were "a little bit pushed into the relationship". This does not support a finding that the parties were committed to their relationship or that they considered their relationship as long-term.
60. The applicant described the sponsor as "the most easy-going person I know". She said that he was scared of his father. She said that if she told the sponsor anything he respected it but would then tell his father and follow his father's advice. This does not indicate that the sponsor provided the applicant the degree of companionship and emotional support which would be expected in a genuine relationship.
61. As indicated above, the sponsor travelled to India just over two months after the parties were married. She initiated the plans to travel to India a week or two before their wedding. Although it is claimed that she had to return to India to be with her father who was in hospital, there is no information before the Tribunal which would support this claim.
62. The applicant claimed that she wanted the sponsor to accompany her to India, but he could not travel with her as his father did not approve and he had just started a job. The fact that the sponsor would not be willing to travel with the applicant to India to spend time with her father indicates a lack of commitment to the relationship. Particularly as it is claimed that the applicant's father was ill, this indicates the sponsor did not provide the applicant the degree of companionship and emotional support which would be expected in a genuine relationship. The fact that the applicant planned before the wedding to travel alone to India so soon after her marriage to the sponsor indicates a lack of commitment to the relationship by her.
63. The sponsor contacted the Department and alleged the sponsor had never been in a genuine relationship with him and that the only reason she married him was to get Australian citizenship. He believed she had a boyfriend in India who she was later planning to sponsor. He also accused the sponsor of taking money from his family without consent.

64. The Tribunal places little weight on the allegations made by the sponsor that the applicant has a boyfriend in India or that she took money from his family without their consent. The fact, however, that so soon after their marriage the sponsor has stated that his relationship with the applicant had ended and that he believed she had only married him to obtain Australian citizenship indicates that he had a lack of commitment to the relationship and that neither party provided the other the degree of companionship and emotional support which would be expected in a genuine and continuing relationship.
65. Overall, the Tribunal is not satisfied that the parties have displayed the degree of commitment to each other at any time which would support a finding that the parties were ever in a genuine and continuing relationship or that they had a mutual commitment to a shared life as husband and wife to the exclusion of all others.

Overall assessment

66. The Tribunal has considered all the information before it both individually and cumulatively. When the applicant first applied for the visa, she provided little information to support the claim that she was in a genuine and continuing relationship with the sponsor. She departed Australia about a month after the application was filed and did not live again with the sponsor. She has now divorced the sponsor.
67. The Tribunal is not satisfied that at any time the applicant was the spouse, as defined in s.5F of the Act, of the sponsor. For the reasons set out above, the Tribunal finds that the parties were never in a genuine and continuing relationship. In coming to this conclusion, the Tribunal has taken into account the allegations made by the applicant as to family violence and the reports she has provided in support of that claim. In those reports, it is alleged that the applicant was subject to abuse and harassment from the sponsor's brother, [Mr E], and the sponsor's father. It does not indicate the sponsor was protective of the applicant at all and simply followed the directions of his father. This was repeated by the applicant at the hearing before the Tribunal. The fact that the sponsor was simply following directions from his family do not support a finding that he ever have a commitment to the relationship or that the parties were ever in a genuine and continuing relationship.
68. The Tribunal finds that the parties were never in a genuine and continuing relationship. The Tribunal finds that the parties never had a mutual commitment to a shared life as husband and wife to the exclusion of all others.
69. On the basis of the above the Tribunal is not satisfied that the requirements of s.5F(2) are met at the time the visa application was made. Therefore the applicant does not meet cl.820.211(2). No claims have been made that the applicant would meet any of the alternate criteria in cl.820.211 at the time of the application.

Family violence claims

70. As set out above, the Tribunal has found the applicant does not meet the time of application criteria that she is the spouse of the sponsoring partner. The applicant therefore does not meet the criteria for the grant of the visa. The Tribunal has also considered whether the applicant would meet the time of decision criteria, despite not meeting the time of application criteria.
71. The applicant has claimed that any relationship she had with the sponsor has ended. She stated she divorced the sponsor, on her application [in] March 2019. A copy of the divorce order has been provided. She has claimed that she has suffered family violence.

72. Under r.1.23 of the Regulations, a person is taken to have suffered or committed family violence if there is evidence tested before a court; or the visa application includes a non-judicially determined claim of family violence, and either the Minister (or the Tribunal on review) is satisfied that the alleged victim has suffered relevant family violence or an opinion of an independent expert has been given that the alleged victim has suffered relevant family violence. Relevant family violence is defined in r.1.21. These regulations, as relevant to this decision, are extracted in the attachment to this decision. The Tribunal notes that the violence, or part of the violence must have occurred during the relationship: r.1.23(3), (5), (7), (12), (14).
73. In the present case the applicant is seeking to establish family violence on the basis of a non-judicially determined claim of family violence.

Has a claim of family violence been made under the regulations?

74. Under r.1.23, a visa application is taken to include a non-judicially determined claim of family violence where either a joint undertaking to a court has been made by the alleged victim and alleged perpetrator or evidence in accordance with r.1.24 is provided.
75. The applicant in this case is seeking to rely on evidence referred to in r.1.24 – namely, a statutory declaration under r.1.25 and evidence of a type and number specified by the Minister for these purposes (see IMMI 12/116).
76. A statutory declaration under r.1.25 must be made by the spouse or partner of the alleged perpetrator. If the alleged victim is the spouse or partner, the statutory declaration must set out the allegation of family violence, name the person alleged to have committed the relevant family violence and if the *conduct* was not directed at the spouse or partner, name the person to whom it is directed and their relationship with the deponent: r.1.25(2). There are different requirements if the family violence is alleged to have occurred to another person: r.1.25(3).
77. The applicant's statutory declaration dated 21 April 2017 stated that she "was a victim of Domestic violence by a family member of my husband". She claimed that she had suffered family violence committed by the sponsor's brother, [Mr E], and the sponsor's father. She provided details of these allegations. In her statement, she does not make any claim that at any time she suffered family violence or was fearful for her well-being and safety due to any conduct of the sponsor.
78. During the hearing, the applicant described the sponsor as "the most easy-going person I know". She said that he respected anything she said, but would tell his father what she had told him. She described him as having no problems with her going to India or anything else she did. She said the only frustration she had with him was that he did not stand up against his father.
79. The Tribunal finds that in her statement and in the information she provided to the Tribunal the applicant has made no claim that she has suffered family violence committed by the sponsoring partner.
80. The evidence the applicant provided to support her application that she had suffered family violence committed by the sponsoring partner is set out above. The medical certificates provided referred to the applicant suffering from various conditions, including depression and anxiety. This is described as being "due to recent life events which has affected her daily living". At that time, the applicant claims that her father was suffering from a [medical] condition and she had to return to India to be by his side, her relationship with the sponsor had ended and she had no support in Australia, and her sponsor's father was demanding the

return of money she had transferred from the sponsor's account to her sole account. The Tribunal is not satisfied that the medical certificate provided is consistent with the claimed family violence. The Tribunal finds the medical certificates provided do not meet the evidentiary requirements to establish a claim of family violence.

81. The applicant provided reports from two psychiatrists. The report from [Mr B] claims her marriage failed due to reporting the continued sexual harassment she was subjected to by her husband's brother. The applicant is reported as accusing the sponsor's brother of sending threatening texts. She is reported as claiming she was subjected to domestic violence from her in-laws. There is no claim that there was any conduct by the sponsor that caused the applicant to fear for her well-being or safety.
82. The Tribunal is not satisfied that the report from [Mr B], psychologist, meets the evidentiary requirements for establishing a claim for family violence as he does not identify the sponsor as the alleged perpetrator of any family violence against the applicant.
83. The report from [Ms D], psychologist, similarly alleges that, among other people, the applicant suffered violence and harassment from the sponsor's brother, [Mr E], and the sponsor's father during the course of the claimed relationship. No allegation is made that the applicant suffered family violence committed by the sponsoring partner.
84. The Tribunal is not satisfied the report from [Ms D], psychologist, meets the evidentiary requirements for establishing a claim for family violence as it does not identify the sponsor as the alleged perpetrator of any family violence against the applicant.
85. For the above reasons, the Tribunal finds the evidence presented does not meet the requirements of r.1.24. As such, a non-judicially determined claim of family violence has not been made under r.1.23.
86. The Tribunal finds that no allegation has been made and no evidence has been provided as required by the regulations that the applicant has suffered family violence committed by the sponsoring partner. Accordingly, the Tribunal finds the applicant does not meet the criteria in cl.820.221(3).
87. The applicant has acknowledged that she is no longer in a relationship with the sponsor and no claims have been made that the applicant meets any of the alternate criteria in cl.820.221.
88. For the above reasons, the Tribunal finds the applicant does not meet the criteria at the time of the application in cl.820.211. Further, the Tribunal finds that the applicant does not meet the time of decision criteria in cl.820.221. As both these criteria must be met for the grant of the visa and as the applicant does not meet these criteria, the Tribunal must affirm the decision to refuse her application for a Partner visa.

DECISION

89. The Tribunal affirms the decision not to grant the applicant a Partner (Temporary) (Class UK) visa.

Hugh Sanderson
Member

ATTACHMENT - Extract from Migration Regulations 1994

1.15A Spouse

- (1) For subsection 5F (3) of the Act, this regulation sets out arrangements for the purpose of determining whether 1 or more of the conditions in paragraphs 5F (2) (a), (b), (c) and (d) of the Act exist.
- (2) If the Minister is considering an application for:
 - (a) a Partner (Migrant) (Class BC) visa; or
 - (b) a Partner (Provisional) (Class UF) visa; or
 - (c) a Partner (Residence) (Class BS) visa; or
 - (d) a Partner (Temporary) (Class UK) visa;

the Minister must consider all of the circumstances of the relationship, including the matters set out in subregulation (3).

- (3) The matters for subregulation (2) are:
 - (a) the financial aspects of the relationship, including:
 - (i) any joint ownership of real estate or other major assets; and
 - (ii) any joint liabilities; and
 - (iii) the extent of any pooling of financial resources, especially in relation to major financial commitments; and
 - (iv) whether one person in the relationship owes any legal obligation in respect of the other; and
 - (v) the basis of any sharing of day to day household expenses; and
 - (b) the nature of the household, including:
 - (i) any joint responsibility for the care and support of children; and
 - (ii) the living arrangements of the persons; and
 - (iii) any sharing of the responsibility for housework; and
 - (c) the social aspects of the relationship, including:
 - (i) whether the persons represent themselves to other people as being married to each other; and
 - (ii) the opinion of the persons' friends and acquaintances about the nature of the relationship; and
 - (iii) any basis on which the persons plan and undertake joint social activities; and
 - (d) the nature of the persons' commitment to each other, including:
 - (i) the duration of the relationship; and
 - (ii) the length of time during which the persons have lived together; and
 - (iii) the degree of companionship and emotional support that the persons draw from each other; and
 - (iv) whether the persons see the relationship as a long term one.
- (4) If the Minister is considering an application for a visa of a class other than a class mentioned in subregulation (2), the Minister may consider any of the circumstances mentioned in subregulation (3).

ATTACHMENT – EXTRACTS FROM THE MIGRATION REGULATIONS 1994

1.21 Interpretation

In this Division:

independent expert means a person who:

- (a) is suitably qualified to make independent assessments of non-judicially determined claims of family violence; and
- (b) is employed by, or contracted to provide services to, an organisation that is specified, in a legislative instrument made by the Minister, for the purpose of making independent assessments of non-judicially determined claims of family violence.

non-judicially determined claim of family violence has the meaning given by subregulations 1.23(8) and (9).

relevant family violence means conduct, whether actual or threatened, towards:

- (a) the alleged victim; or
- (b) a member of the family unit of the alleged victim; or
- (c) a member of the family unit of the alleged perpetrator; or
- (d) the property of the alleged victim; or
- (e) the property of a member of the family unit of the alleged victim; or
- (f) the property of a member of the family unit of the alleged perpetrator;

that causes the alleged victim to reasonably fear for, or to be reasonably apprehensive about, his or her own wellbeing or safety.

statutory declaration means a statutory declaration under the *Statutory Declarations Act 1959*.

violence includes a threat of violence.

...

1.23 When is a person taken to have suffered or committed family violence?

(1) For these Regulations, this regulation explains when:

- (a) a person (the alleged victim) is taken to have suffered family violence; and
- (b) another person (the alleged perpetrator) is taken to have committed family violence in relation to the alleged victim.

Note Schedule 2 sets out which visas may be granted on the basis of a person having suffered family violence. The criteria to be satisfied for the visa to be granted set out which persons may be taken to have suffered family violence, and how those persons are related to the spouse or de facto partner of the alleged perpetrator mentioned in this regulation.

Circumstances in which family violence is suffered and committed — injunction under Family Law Act 1975

- (2) The alleged victim is taken to have suffered family violence, and the alleged perpetrator is taken to have committed family violence, if, on the application of the alleged victim, a court has granted an injunction under paragraph 114(1)(a), (b) or (c) of the Family Law Act 1975 against the alleged perpetrator.
- (3) For subregulation (2), the violence, or part of the violence, that led to the granting of the injunction must have occurred while the married relationship between the alleged perpetrator and the spouse of the alleged perpetrator existed.

Circumstances in which family violence is suffered and committed — court order

- (4) The alleged victim is taken to have suffered family violence, and the alleged perpetrator is taken to have committed family violence, if:
 - (a) a court has made an order under a law of a State or Territory against the alleged perpetrator for the protection of the alleged victim from violence; and
 - (b) [...] order was made after the court had given the alleged perpetrator an opportunity to be heard, or otherwise to make submissions to the court, in relation to the matter.

- (5) For subregulation (4), the violence, or part of the violence, that led to the granting of the order must have occurred while the married relationship or de facto relationship existed between the alleged perpetrator and the spouse or de facto partner of the alleged perpetrator.

Circumstances in which family violence is suffered and committed — conviction

- (6) The alleged victim is taken to have suffered family violence, and the alleged perpetrator is taken to have committed family violence, if a court has:
- (a) convicted the alleged perpetrator of an offence of violence against the alleged victim; or
 - (b) recorded a finding of guilt against the alleged perpetrator in respect of an offence of violence against the alleged victim.
- (7) For subregulation (6), the violence, or part of the violence, that led to the conviction or recording of a finding of guilt must have occurred while the married relationship or de facto relationship existed between the alleged perpetrator and the spouse or de facto partner of the alleged perpetrator.

Circumstances in which family violence is suffered and committed — non-judicially determined claim of family violence

- (8) For these Regulations, an application for a visa is taken to include a non-judicially determined claim of family violence if:
- (a) the applicant seeks to satisfy a prescribed criterion that the applicant, or another person mentioned in the criterion, has suffered family violence; and
 - (b) the alleged victim and the alleged perpetrator have made a joint undertaking to a court in relation to proceedings in which an allegation is before the court that the alleged perpetrator has committed an act of violence against the alleged victim.
- (9) For these Regulations, an application for a visa is taken to include a non-judicially determined claim of family violence if:
- (a) the applicant seeks to satisfy a prescribed criterion that the applicant, or another person mentioned in the criterion, has suffered family violence; and
 - (b) the alleged victim is:
 - (i) a spouse or de facto partner of the alleged perpetrator; or
 - (ii) a dependent child of:
 - (A) the alleged perpetrator; or
 - (B) the spouse or de facto partner of the alleged perpetrator; or
 - (C) both the alleged perpetrator and his or her spouse or de facto partner; or
 - (iii) a member of the family unit of a spouse or de facto partner of the alleged perpetrator (being a member of the family unit who has made a combined application for a visa with the spouse or de facto partner); and
 - (c) the alleged victim or another person on the alleged victim's behalf has presented evidence in accordance with regulation 1.24 that:
 - (i) the alleged victim has suffered relevant family violence; and
 - (ii) the alleged perpetrator committed that relevant family violence.
- (10) If an application for a visa includes a non-judicially determined claim of family violence:
- (a) the Minister must consider whether the alleged victim has suffered relevant family violence; and
 - (b) if the Minister is satisfied that the alleged victim has suffered the relevant family violence, the Minister must consider the application on that basis; and
 - (c) if the Minister is not satisfied that the alleged victim has suffered the relevant family violence:
 - (i) the Minister must seek the opinion of an independent expert about whether the alleged victim has suffered the relevant family violence; and
 - (ii) the Minister must take an independent expert's opinion on the matter to be correct for the purposes of deciding whether the alleged victim satisfies a prescribed criterion for a visa that requires the applicant for the visa, or another person mentioned in the criterion, to have suffered family violence.

- (11) The alleged victim is taken to have suffered family violence, and the alleged perpetrator is taken to have committed family violence, if:
 - (a) an application for a visa includes a non-judicially determined claim of family violence; and
 - (b) the Minister is satisfied under paragraph (10)(b) that the alleged victim has suffered relevant family violence.
- (12) For subregulation (11), the Minister must be satisfied that the relevant family violence, or part of the relevant family violence, occurred while the married relationship or de facto relationship existed between the alleged perpetrator and the spouse or de facto partner of the alleged perpetrator.
- (13) The alleged victim is taken to have suffered family violence, and the alleged perpetrator is taken to have committed family violence, if:
 - (a) an application for a visa includes a non-judicially determined claim of family violence; and
 - (b) the Minister is required by subparagraph (10)(c)(ii) to take as correct an opinion of an independent expert that the alleged victim has suffered relevant family violence.
- (14) For subregulation (13), the violence, or part of the violence, that led to the independent expert having the opinion that the alleged victim has suffered relevant family violence must have occurred while the married relationship or de facto relationship existed between the alleged perpetrator and the spouse or de facto partner of the alleged perpetrator.